In The Court of Ms. Shuchi Laler,
District Judge-02, East District,
Karkardooma Courts, Delhi.

Ex. No. 102/2022
CNR No. DLET01-002188-2022

In the matter of :-

Smt. Usha Rani,
W/o Sh. Rajendra Kumar Gupta,
R/o 229, 2nd Floor, Deepali,
Pitampura, Delhi-110034

......Decree Holder.

Versus

1. M/s Ecnon Residency Buildcon Pvt. Ltd.
2. Kushal Rathi, Director.
3. Neeraj Kumar Sharma, Director.
4. Ritu Kapoor, Director.

All R/o
129, DLF Galleria Mall,
Mayur Vihar, Phase-I,
District Centre, Delhi-110091.

.....Judgement Debtor

**ORDER ON APPLICATION UNDER SECTION 153 R/W SECTION 151 CPC.**

1. The instant execution petition has been filed with respect to the decree dated 06.06.2017, whereby the suit of the decree holder/plaintiff was decreed under Order XII Rule 6

CPC for an amount of Rs.3,50,000/- along with interest @ 12% p.a. Notice of the execution petition was issued to judgement debtors and on 25.08.2022, the present application was filed.

2. Feeling aggrieved by the initiation of execution proceedings against him personally, Judgment Debtor No. 3, Sh. Neeraj Kumar Sharma, filed the present application under Section 153 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), read with Section 151 CPC, seeking the relief that the names of Judgment Debtors No. 3 and 4 be removed from the execution proceedings.

3. In the present application, JD No.3 has stated that vide order dated 11.08.2016, the Plaintiff's counsel had specifically not pressed for issuance of notice to Defendants No. 2 to 4, and had confined the prayer for issuance of process to Defendant No. 1 only. The Decree Sheet, however, erroneously records the names of Defendants No. 2 to 4 and once they were dropped from the array of parties, decree sheet could not have been prepared against them.

4. A reply to the aforesaid application was filed by the Decree Holder/Plaintiff, wherein a preliminary objection was taken as to its maintainability on the ground that the judgement/decree, dated 06.06.2017 has attained finality and

this Court has no jurisdiction to amend the judgement/decree. It is stated that the plaintiff/Decree Holder never intended to drop Defendants No. 2 to 4 from the array of parties, and no amended Memo of Parties to that effect is on record. It is further stated that JD No.3/applicant is presently director of JD No.1 and summons were served upon Defendant No. 1 company, which was being managed through the applicant/JD No.3. The DH has averred that the decree was correctly passed against all the defendants, including the applicant. Dismissal of the present application has been prayed for.

5. Rival submissions advanced at bar have been heard and record perused.

6. For deciding the instant application, it is apposite to refer to the proceedings of the civil suit bearing No. 3145/2016, wherein the judgement/decree dated 06.06.2017 was passed. The civil suit bearing No. 3145/16 was instituted by the Plaintiff against four defendants:-

(i) Defendant No. 1: M/s ECNON Residency Buildcon Pvt. Ltd. (the Company)

(ii) Defendant No. 2: Sh. Neeraj Kumar Sharma, Director

(iii) Defendant No. 3: Sh. Kushal Rathi, Director

(iv) Defendant No. 4: Ms. Ritu Kapoor, Director

7. The aforesaid suit was for recovery of Rs. 5,98,500/-, out of which Rs. 3,50,000/- was the principal booking amount paid by the Plaintiff towards a two BHK flat booked in the project of Defendant No. 1 company, and Rs. 2,48,500/- was interest accrued thereupon @ 24% per annum. The project never commenced, hence, the Plaintiff cancelled the booking on 25.02.2016 and demanded refund, which was not made despite service of notice dated 26.07.2016.

8. On the first date of hearing, i.e., on 11.08.2016, the following order was passed by the Ld. Predecessor:

> ***"11.08.2016***
>
> ***Fresh suit received by way of assignment by Ld. District & Sessions Judge, East District, Karkardooma Courts, Delhi, checked and registered as per rules.***
>
> ***Present: Sh. Ram Kishan, Ld. Counsel for the Plaintiff.***
>
> ***Ld. Counsel for the Plaintiff submits that at this stage, he is not pressing for issuance of notice to defendants no. 2 to 4 and confines his prayer for issuance of notice to defendant no. 1 only.***
>
> ***Heard. Subject to just exceptions, summons of this plaint be issued to defendant no. 1 by ordinary, registered/speed post A.D. as well as through an Approved Courier. Process be sent to the address of defendant no. 1 as mentioned in the plaint.…***
>
> ***Notice is returnable on 07.10.2016."***

9. A reading of the aforesaid order makes it apparent that on 11.08.2016, Ld. Counsel for plaintiff had specifically submitted before Ld. Predecessor that he was not pressing for issuance of summons to defendants No.2 to 4 and had

confined his prayer for issuance of summons to defendant No.1, i.e., the Company only. Considering his submission, Ld. Predecessor had issued summons to defendant No.1 only and there was no direction for issuance of process to defendant No.2, 3 or 4.

10. Perusal of record reveals that the written statement was only filed by Defendant No. 1 company, and the suit was also contested solely by Defendant No. 1. Defendants No. 2 to 4/ the directors were never summoned, served, nor they appeared before Ld. Predecessor at any stage. The suit was contested by Defendant No. 1 company alone through its authorized representative, i.e., Nand Lal.

11. The order dated 11.08.2016 reflects clear and unambiguous intention of the plaintiff to forgo his right to proceed against defendants No.2 to 4 and to confine the relief sought in the plaint strictly to defendant No.1/Company.

12. Ld. Predecessor decreed the suit of the plaintiff under Order XII Rule 6 CPC on 06.06.2017, and granted the relief as under:-

> ***"12. It is thus, directed that the defendants shall pay the booking amount of Rs. 3,50,000/- to the plaintiff. The plaintiff claim an interest @***

*24% per annum, which in my opinion is at the higher side. Even if the amount was kept in fixed deposit by the plaintiff, it would not have earned more than 12% per annum. Accordingly, it is directed that the defendant shall pay an interest @ 12% p.a on the principle amount of Rs. 3,50,000/- from the date of booking of the flat till the filing of the suit. The suit of the plaintiff is decreed accordingly. A decree sheet be prepared in terms of the above judgment."*

13. Ld. Counsel had strenuously relied upon the aforesaid observation and urged that the decree was passed against all the defendants and the executing Court cannot go behind the decree, thus, JD No.3/defendant No.2 cannot escape from his liability to pay the decreetal amount.

14. No doubt, in the first line of paragraph, reproduced herein above, Ld. Predecessor used the word "defendants" while directing the defendants to pay the booking amount of Rs. 3,50,000/- to the plaintiff. However, in the fifth line of the same paragraph, while directing the payment of interest, Ld. Predecessor used the word "defendant".

15. The use of the term “defendants” in the first line of the concluding paragraph appears to be a typographical error. When the concluding paragraph is read conjointly with the entire proceedings of the civil suit, more particularly, the order dated 11.08.2016, it becomes apparent that the decree

was passed against defendant No.1 Company only. The decree could not have been passed against its Directors, i.e., Defendants No. 2 to 4 as the plaintiff himself chose not to contest the suit against them. The scope of decree dated 06.06.2017 cannot be enlarged to such an extent so as to include the directors of defendant No.1 Company against whom no summons were ever issued.

16. The inclusion of the names of Defendants No. 2 to 4 in the Decree Sheet seems to be an inadvertent and typographical error. It is contrary to the record, as no decree could have been passed against a party who was never summoned, nor heard.

17. This Court is not in agreement with the arguments advanced by ld. Counsel for decree holder. It was submitted that the plaintiff/Decree Holder never intended to drop the applicant from the array of parties, however, this is in complete contrast to the judicial record as on 11.08.2016, Ld. Counsel for plaintiff, who is also representing the decree holder in the instant execution petition, had submitted before the Court that he is not pressing for issuance of suummons to defendants No.2 to 4.

18. The Decree Holder cannot, at the stage of execution proceedings, approbate and reprobate simultaneously as previously he elected not to proceed against the directors and confined his prayer to the company alone, and now he cannot be permitted to seek execution against the directors in their personal capacity.

19. A decree passed against a company, in law, is executable against the assets of the company. The corporate veil, in the absence of a specific finding of fraud or misrepresentation warranting lifting thereof, protects the individual directors from personal liability towards the debts of the company. In the present case, the decree has been passed primarily on the basis of the written statement of defendant No. 1 company, and no finding has been recorded against the directors in their individual capacity.

20. The limited role of Judgment Debtors No. 2, 3, and 4 being directors of Judgment Debtor No. 1 company is that they shall disclose the assets of the company so that the decree can be satisfied through those assets. The directors cannot be asked to disclose their personal assets nor they can be made liable in their individual capacity.

21. Hence, Judgment Debtors No. 2, 3, and 4, as directors of Judgment Debtor No. 1 company, are directed to file their affidavits before this Court within four weeks disclosing therein:-

(a) the assets owned by Judgment Debtor No. 1 company; and (b) whether they, in their capacity as directors, hold any asset on behalf of or belonging to Judgment Debtor No. 1 company.

22. The decree sheet dated 06.06.2017 to the extent that it records the name of defendants No.2 to 4 is contrary to the record. The decree sheet, in exercise of power under Section 153 read with Section 151 CPC, is modified to the extent that the name of defendants No. 2 to 4 stand deleted therefrom and the decree/judgement dated 06.06.2017 be read conjointly with order dated 11.08.2016 and be enforced against the defendant No.1 only.

23. Keeping in view the foregoing reasons and discussion, the application filed by Judgment Debtor No. 3, Sh. Neeraj Kumar Sharma, under Section 153 r/w Section 151 CPC, is hereby disposed off.

24. Needless to state, the present order does not in any manner diminish or affect the right of decree holder to execute the decree against judgement debtor No.1, M/s ECNON Residency Buildcon Pvt. Ltd.

Announced in the open
Court on 07.03.2026

(Shuchi Laler)
District Judge-02, East District,
Karkardooma Courts, Delhi.